

SCHEDULE 4

GRANT OF PERMITS

PART 2

DETERMINATION OF APPLICATIONS

9.—(1) Subject to paragraph 23, the enforcing authority shall, within 14 days of receiving an application for a permit, give notice of the application, enclosing a copy of it, to the following persons—

- (a) in the case of an application for a permit to operate an installation or Part A mobile plant, the Health and Social Services Board in whose area the installation or mobile plant will be operated;
- (b) in the case of an application for a permit to operate a Part A installation or Part A mobile plant—
 - (i) the Food Standards Agency⁽¹⁾;
 - (ii) where the operation of the installation or mobile plant may involve the release of any substance into a sewer vested in the Department for Regional Development, that Department;
 - (iii) where the operation of the installation or mobile plant may involve an emission which may affect an area of special scientific interest or a European site, the Department of the Environment;
 - (iv) where the operation of the installation or mobile plant may involve the release of any substance into a harbour managed by a harbour authority, that harbour authority;
 - (v) where the operation of the installation or mobile plant may involve the release of any substance directly into sea fisheries waters, the Department of Agriculture and Rural Development;
 - (vi) where the operation of the installation or mobile plant may involve the release of any substance directly into inland fisheries waters, the Department of Culture, Arts and Leisure;
 - (vii) where the operation of the installation or mobile plant may involve the release of any substance directly into waters under the control of The Loughs Agency or Waterways Ireland, The Loughs Agency or Waterways Ireland as the case may be;
 - (viii) where the application will be determined by the chief inspector, the district council in whose district the installation or mobile plant will be operated;
 - (ix) where the operation of the installation or mobile plant will involve the carrying out of a specified waste management activity, the Department of the Environment (Planning Service);
- (c) in the case of an application for a permit to operate a Part B or Part C installation where the operation of the installation may involve an emission which may affect an area of special scientific interest or a European site, the Department of the Environment;
- (d) in the case of an application for a permit to operate an installation or a Part A mobile plant on a site in respect of which a major accident prevention policy document is required under regulation 5 of the Control of Major Accident Hazards Regulations (Northern Ireland)

(1) See section 1 of the Food Standards Act 1999 (c. 28)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

2000(2) or a safety report is required under regulation 7 of those Regulations, the Health and Safety Executive for Northern Ireland;

(e) in the case of an application for a permit to operate a Part C installation involving only the carrying out of an activity falling within paragraph (b) of Part C of Section 1.2 of Part 1 of Schedule 1 (unloading of petrol at service stations), the petroleum licensing authority for that installation;

(f) in the case of all applications, such other persons as the Department may direct.

(2) In sub-paragraph (1)–

“European site” has the same meaning as in regulation 9(1) of the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995(3);

“harbour authority” has the same meaning as in section 38(1) of the Harbours Act (Northern Ireland) 1970(4);

“Health and Safety Executive for Northern Ireland” means the Health and Safety Executive established under Article 12 of the Health and Safety at Work (Northern Ireland) Order 1978(5);

“Health and Social Services Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(6);

“The Loughs Agency” means an agency of the Foyle, Carlingford and Irish Lights Commission, the implementation body for aquaculture and marine matters established under Article 1 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing implementation bodies(7);

“petroleum licensing authority” means a district council empowered to grant petroleum spirit licences under the Petroleum (Consolidation) Act (Northern Ireland) 1929(8);

“Waterways Ireland” means the implementation body for inland waterways established under Article 1 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing implementation bodies.

10. Paragraph 9 shall not apply in relation to an application for a permit to operate an installation involving only the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts.

11.—(1) If the enforcing authority proposes to grant a permit subject to an off-site condition, it shall, before granting the permit, give a notice which complies with sub-paragraph (2) to every person appearing to it to be a person falling within sub-paragraph (3).

(2) A notice served under sub-paragraph (1) shall–

(a) be in writing;

(b) set out the off-site condition in question;

(c) indicate the nature of the works or things which that condition might require the holder of the permit to carry out or do; and

(d) specify the period allowed for the purpose of paragraph 12 for making representations to the enforcing authority relating to the condition or its possible effects and the manner in which any such representations are to be made.

(2) [SR 2000 No. 93](#)

(3) [SR 1995 No. 380](#)

(4) [1970 c. 1 \(NI\)](#)

(5) [S.I. 1978/1039 \(NI 9\)](#)

(6) [S.I. 1972/1265 \(NI 14\)](#)

(7) See Schedule 1 to the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 ([S.I. 1999/859](#))

(8) [1929 c. 13 \(NI\)](#)

- (3) A person falls within this sub-paragraph if—
- (a) he is the owner, lessee or occupier of land; and
 - (b) that land is land in relation to which it is likely that, as a consequence of the permit being issued subject to the off-site condition in question, rights will have to be granted by virtue of regulation 12(12) to the holder of the permit.
- (4) In sub-paragraph (3), “owner” means the person who—
- (a) is for the time being receiving the rack-rent of the land, whether on his own account or as agent or trustee for another person; or
 - (b) would receive the rack-rent if the land were let at a rack-rent,
- but does not include a mortgagee not in possession.

12.—(1) Any representations made by any persons within the period allowed shall be considered by the enforcing authority in determining the application.

- (2) For the purpose of sub-paragraph (1), the period allowed for making representations is—
- (a) in the case of any person to whom notice is given pursuant to paragraph 9, the period of 42 days beginning with the date on which notice is given;
 - (b) in the case of any person to whom notice is given pursuant to paragraph 11, the period specified in the notice;
 - (c) in the case of any other person, the period of 42 days beginning with the date on which the application is advertised pursuant to paragraph 5.

13. In the case of an application for a permit to operate a Part A installation, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment in relation to the installation shall be taken into consideration by the chief inspector in determining the application.

14.—(1) The Department may give directions to the enforcing authority requiring that any particular application or any class of applications for a permit shall be referred to it for determination pending a further direction under sub-paragraph (13).

(2) The enforcing authority shall inform the applicant of the fact that his application is being referred to the Department and forward to the Department any representations which have been made to the enforcing authority within the period allowed.

(3) Where an application for a permit is referred to it under sub-paragraph (1), the Department may afford the applicant and the enforcing authority an opportunity of appearing before and being heard by a person appointed by the Department (the “appointed person”) and it shall do so in any case where a request is duly made by the applicant or the enforcing authority to be so heard.

(4) A request under sub-paragraph (3) shall be in writing and shall be made within the period of 21 days beginning with the day on which the applicant is informed that the application is being referred to the Department.

(5) A hearing held under sub-paragraph (3) may, if the appointed person so decides, be held wholly or to any extent, in private.

(6) Where the Department causes a hearing to be held under sub-paragraph (3) it shall give the applicant and the enforcing authority at least 28 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(7) In the case of a hearing under sub-paragraph (3) which is to be held wholly or partly in public, the Department shall, at least 21 days before the date fixed for the holding of the hearing—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) where the application relates to the operation of an installation or Part A mobile plant, publish a copy of the notice mentioned in sub-paragraph (6) in at least two newspapers circulating in the locality in which the installation or mobile is operated;
 - (b) serve a copy of that notice on every person required to be notified under paragraph 9 of this Schedule and on any person who made representations to the enforcing authority with respect to the subject matter of the application.
- (8) The Department may vary the date fixed for the holding of any hearing under sub-paragraph (3) and sub-paragraphs (6) and (7) shall apply to the variation of a date as they applied to the date originally fixed.
- (9) The Department may also vary the time or place for the holding of a hearing under sub-paragraph (3) and shall give such notice of any variation as appears to it to be reasonable.
- (10) The persons entitled to be heard at a hearing under sub-paragraph (3) are—
- (a) the applicant;
 - (b) the enforcing authority; and
 - (c) any person required under paragraph 9 of this Schedule to be notified of the application.
- (11) Nothing in sub-paragraph (10) shall prevent the appointed person from permitting any other persons to be heard at the hearing and such permission shall not be unreasonably withheld.
- (12) After the conclusion of a hearing, the appointed person shall make a report in writing to the Department which shall include his conclusions and recommendations or his reasons for not making any recommendations.
- (13) The Department shall, on determining any application transferred to it under this paragraph, give to the enforcing authority such a direction as it thinks fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the permit.
- 15.—(1) Except in a case where an application has been referred to the Department under paragraph 14 and subject to paragraph 18, the enforcing authority shall give notice of its determination of an application for a permit—
- (a) for new installations and mobile plant and for existing Part A installations and existing Part A mobile plant where there is a substantial change to the operation of the installation or mobile plant, within the period of six months beginning with the day on which it received the application;
 - (b) for existing Part A installations and existing Part A mobile plant other than those referred to in sub-paragraph (a), within the period of nine months beginning with the day on which it received the application;
 - (c) in any case, within such longer period as may be agreed with the applicant.
- (2) For the purpose of calculating the periods mentioned in sub-paragraph (1) no account shall be taken of—
- (a) any period beginning with the date on which notice is served on the applicant under paragraph 4 and ending on the date on which the applicant furnishes the information specified in the notice;
 - (b) any period allowed for making representations in relation to a notice given pursuant to paragraph 11 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 12;
 - (c) where a matter falls to be determined under regulation 31 or 32, any period beginning with the date on which the period of 28 days referred to in paragraph 5 ends and ending on the date on which the application is advertised in accordance with paragraph 23(a).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

16. If the enforcing authority fails to give notice of its determination of an application for a permit within the period allowed by or under paragraph 15, the application shall, if the applicant notifies the authority in writing that he treats the failure as such, be deemed to have been refused at the end of that period.

17. Where the Department is aware that the operation of an installation carrying out an activity listed in Annex I to the Directive in Northern Ireland is likely to have significant negative effects on the environment of another Member State, or where another Member State likely to be significantly affected so requests, the Department shall forward a copy of the application to operate that installation to the other Member State at the same time as the application is advertised pursuant to paragraph 5 (or as soon as it becomes so aware or receives such a request, if it becomes so aware or receives such a request after the application is advertised but before the application is determined) in order that the application may serve as the basis for any consultations necessary in the framework of the bilateral relations between the United Kingdom and the other Member State on a reciprocal and equivalent basis, as referred to in Article 17 of the Directive.

18.—(1) Where an application is forwarded to another Member State pursuant to paragraph 17 the Department shall notify the applicant and the chief inspector and, in a case where the application has not been referred to the Department under paragraph 14—

- (a) the chief inspector shall not determine the application until the Department has notified him in writing that the bilateral consultations mentioned in paragraph 17 have been completed and has forwarded to him any representations duly made on the application by persons in the other Member State which have been forwarded to the Department; and
- (b) the period within which to give notice of determination of the application set out in paragraph 15 shall begin on the date on which the chief inspector receives the Department's notification that the bilateral consultations have been completed.

(2) In determining an application which is forwarded to another Member State pursuant to paragraph 17 the chief inspector, or the Department if the application has been referred to it, shall take into consideration any representations duly made in the other Member State which have been forwarded to the Department.

19. In paragraphs 17 and 18, "Member State" shall be taken to include Norway, Iceland and Liechtenstein⁽⁹⁾.

(9) The Directive is extended to the European Economic Area by the decision of the EEA Joint Committee No. 27/97 of 30.4.97 (OJ No. L 242, 4.9.97, p. 76)